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THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY

DECISION NO. 32

IN THE MATTER OF

FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

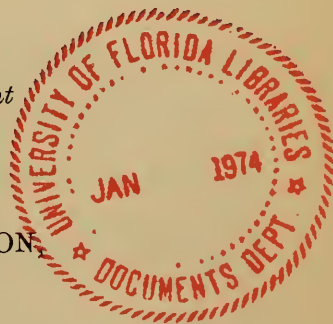
DOCKET NO. 4666

John A. Johnson, Claimant

Peter Baumer, Attorney

CHANDLER P. ANDERSON

American Commissioner



MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON

American Commissioner

(II)

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Peter Baumer, Attorney

The above named claimant has duly filed with the American Commissioner a written request that he fix a reasonable fee to be paid by him to his attorney, Peter Baumer, of New York City, N. Y., as compensation for whatever services have been rendered by him on behalf of and with the authority of the claimant, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928."

The claimant has objected to the amount of the fee asked by the attorney on the ground that it is excessive, and the attorney has been notified of the filing by the claimant of this request that a reasonable fee be fixed. The attorney, in response to a request by the American Commissioner, has filed with him several affidavits and a number of letters giving the information which he desires to have considered by the Commissioner as showing the reasonableness of the fee asked by

him, which information has been brought to the attention of the claimant, who has filed three affidavits in reply, copies of which have been communicated to the attorney.

In this case an award on behalf of the claimant was rendered by this Commission on January 14, 1925, for \$859, with interest thereon at the rate of five per cent per annum from November 11, 1918, to the date of payment, which amount represents the value of personal property belonging to the claimant lost through the sinking on July 27, 1917, of the Auxiliary Bark "Carmela" by a German submarine, and for the further sum of \$20,000, with interest thereon at the rate of five per cent per annum from November 1, 1923, to the date of payment, which amount represents damages for personal injuries suffered by the claimant in consequence of the submarine attack. The claimant was a member of the "Carmela's" crew in the capacity of Master. The total amount received by the claimant from the Treasury Department in payment of the above award was \$25,802.93.

The amount of the fee asked by the attorney as compensation for his services is \$14,000, including disbursements.

It appears from the affidavits and documents filed that on or about April 10, 1922, the claimant retained this attorney to prosecute and collect this claim. At various times thereafter he paid the attorney sums of money totalling in all approximately \$240, and agreed to pay for his services on a contingent basis of fifty per cent of the award when paid. The attorney alleges that the sum of \$240 paid to him by the claimant "represented payment to me for services rendered in other cases", but this the claimant denies. The question at issue is immaterial in this proceeding, as will appear below.

The services rendered by this attorney in prosecuting this claim before this Commission were similar in character and extent to the services rendered by him in another claim (Docket No. 6460), in which, in a proceeding similar to this, the American Commissioner has rendered a decision fixing this attorney's fee. (Decision No. 25.)

In this claim, the German Agent on April 18, 1924, offered in settlement the sum of \$859, with interest at five per cent from November 11, 1918, for the loss of personal effects, and \$3,000, with interest at five per cent from November 1, 1923, for the balance of the claim, but he subsequently increased the offer for personal injuries to \$8,000. These offers were refused. Finally, on June 20, 1924, after

several conferences between this attorney and the American Agency, and after the filing by this attorney of several affidavits by physicians as to the physical condition of the claimant, the German Agent offered in settlement the amounts recommended for award by the American and German Agents in their agreed statement of fact signed on December 22, 1924, which were the amounts awarded by this Commission, as aforesaid.

Subsequent to the award by this Commission, namely, on July 28, 1925, the attorney obtained from the claimant a power of attorney authorizing him to accept on behalf of the claimant the offer of \$859 and \$20,000 with interest as above stated in settlement of his claim, a photostatic copy of which power of attorney was forwarded to the American Agency by this attorney. This power of attorney not only authorized the acceptance of the German Agent's offer of the award which was finally made by this Commission, but also fixed the sum of \$14,000 as the fee to be paid to this attorney in full for all services "rendered or to be hereafter rendered by him," which fee also covered "advances made" and "disbursements incurred" by him and "especially all disbursements and payments for professional services rendered to me by the said Peter Baumer, and all physicians who rendered services to or for me in and about this matter the payment of whose fees and charges Peter Baumer has personally undertaken to make and which said Peter Baumer has agreed and undertaken to fully discharge and satisfy." In order to make the meaning and intent of this power perfectly clear it states in conclusion "the object and purport hereof being that the said Peter Baumer, his executors, administrators, assigns or designees, receive a lump sum of \$14,000, out of the proceeds of the settlement hereinbefore recited, and the rest, residue and remainder of the said fund with all accrued interest on the amount of the settlement agreed on as hereinbefore recited, are to be paid over to me the said John A. Johnson, or unto my heirs, executors, administrators or assigns."

It is to be noted that this power of attorney was executed and filed after it had been definitely settled what amount was to be awarded by this Commission, and after the services rendered by this attorney in the presentation and prosecution of this claim had been fully completed, and it was definitely known both to the claimant and the attorney exactly the character and extent of the services

rendered. Accordingly, the amount of compensation fixed by them in this power of attorney represents their deliberate and informed opinion as to the value of such services, including therein the advances and disbursements and liabilities incurred by the attorney on behalf of the claimant as set forth in this power of attorney.

In the American Commissioner's Decision No. 25, above referred to, he held that the claimant therein, although a seafaring man, was not without worldly experience and knowledge and was competent to protect his own interests, and, therefore, fell within the group of claimants referred to in the following extract from the Report of the Senate Committee on Finance recommending this fee fixing legislation to the Senate:

It is expected, however, that it will not be necessary to alter amounts fixed by contract with large corporations and others capable of protecting their own interests. In such cases the * * * American Commissioner * * * would undoubtedly be justified in fixing the amount specified in the contracts.

In those circumstances, the fee which the claimant therein agreed by his so-called "final power of attorney" to pay his attorney was considered reasonable by the American Commissioner.

In this case, the claimant is also a seafaring man, but there is nothing in the record to show that he was sufficiently capable of protecting his own interests to place him in the group of claimants above referred to. Nevertheless, the record in this case does show that the claimant, prior to signing the power of attorney of July 28, 1925, by which he agreed to pay this attorney the sum of \$14,000 for services rendered and disbursements and obligations incurred, sought and obtained the advice and assistance of another attorney to protect his interests. The attorney in this case and the other attorney employed by the claimant to protect his interests in executing this power of attorney conferred about the matter, and on July 11, 1925, the other attorney wrote a letter to the attorney in this case forwarding a "draft of Power of Attorney and Acceptance from Captain Johnson" and added:

If this meets with your approval, please be good enough to execute the subjoined consent, and return same to me, whereupon I will transmit same to Captain Johnson, with the request that he execute same.

The power of attorney of July 28, 1925, was the result of the negotiations between these two attorneys.

In these circumstances, the American Commissioner holds that the claimant's interests in making his final fee agreement, above mentioned, with this attorney, were fully protected, and, accordingly, that the Commissioner is justified in holding that the fee fixed by that agreement was a reasonable fee within the meaning of the "Settlement of War Claims Act of 1928."

It is understood by the American Commissioner in fixing the fee for this attorney's services that no additional charge is to be made by him for any disbursements or expenses, or for any of the obligations incurred by him as specified in the aforesaid power of attorney.

Now, therefore, in view of the considerations above set forth, and considering that the payment of any compensation to this attorney was contingent upon securing and collecting an award, and in view of the considerations stated in the general Jurisdictional and Administrative Decision rendered by the American Commissioner under date of September 28, 1928, and after careful examination and full consideration of the information furnished in this proceeding by the attorney and the claimant and by the records of this Commission pertinent to the questions involved, and after due deliberation thereon,

The American Commissioner decides and fixes as the reasonable fee to be paid by the claimant, John A. Johnson, to his said attorney, Peter Baumer, the fee fixed in the settlement agreed upon between them, as set out in the power of attorney executed by the claimant on July 28, 1925, namely, fourteen thousand dollars (\$14,000), in addition to the sum of two hundred and forty dollars (\$240) already paid by the claimant to this attorney, the said fee to be paid by the claimant and received by the attorney as full compensation for all services rendered in the prosecution and collection of this claim, as defined in Section 9 of the "Settlement of War Claims Act of 1928."

Done at Washington, D. C., this 18th day of March, 1929.

CHANDLER P. ANDERSON,

American Commissioner,

Mixed Claims Commission,

United States and Germany.

UNIVERSITY OF FLORIDA



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